

**Congress of the United States**  
Washington, DC 20515

May 8th, 2020

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
H-232, U.S. Capitol  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
H-204, U.S. Capitol  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230, U.S. Capitol  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
U.S. Senate  
S-220, U.S. Capitol  
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader Schumer, and Minority Leader McCarthy:

Our nation's safety-net hospitals have always served on the front lines of health care for the medically underserved and uninsured. During the COVID-19 pandemic, these essential providers are stepping up to provide more care and services to their communities. As the outbreak continues and more COVID-19 patients are in need of hospital care, we are concerned that the impact of COVID-19 could temporarily affect hospitals' ability to meet 340B eligibility requirements in ways that could potentially cut off their access to the 340B drug discount program ("340B Program"). To support our safety net hospitals through this crisis, we write to ask that any future supplemental relief bill include policies to temporarily protect these hospitals from losing 340B eligibility due to the COVID-19 pandemic.

To qualify for the 340B Program, hospitals that participate as Medicare disproportionate share ("DSH") hospitals, free-standing children's and cancer hospitals, sole community hospitals (SHCs), and rural referral centers (RRCs) must maintain a minimum DSH adjustment percentage on their most recently filed Medicare cost report. In addressing the surge of COVID-19 patients, hospitals are increasing bed capacity and shifting care from inpatient beds to outpatient settings to reserve space for the critically ill. While such operational changes are essential to build capacity for crisis response at this time, ensuing shifts in payer mix could potentially reduce a hospital's DSH adjustment percentage and jeopardize their eligibility for the 340B Program.

340B eligibility requirements also restrict certain hospitals from using a group purchasing organization (GPO) to purchase covered outpatient drugs. Facing drug shortages and distribution challenges due to COVID-19, some providers are struggling to maintain adequate drug supply

while adhering to the GPO prohibition. HRSA has recently recognized this problem and issued guidance providing some flexibility to 340B hospitals to temporarily purchase drugs through a GPO in certain cases without seeking HRSA approval. However, HRSA indicated it is unable to temporarily waive the GPO prohibition<sup>1</sup>.

Therefore, we ask that Congress consider providing hospitals with temporary flexibility related to 340B program eligibility rules in any future supplemental relief bill. We look forward to working collaboratively with you on this important issue to ensure that our safety-net providers relying on the 340B program can continue to provide vital care to low-income and vulnerable communities during and after the public health emergency.

Sincerely,



Chris Stewart  
Member of Congress



Doris Matsui  
Member of Congress

/s/

Brian Fitzpatrick

Marcia L. Fudge

Tulsi Gabbard

David B. McKinley P.E.

Madeleine Dean

Juan Vargas

Joseph D. Morelle

Tom Cole

Jackie Speier

Joseph P. Kennedy, III

TJ Cox

Diana DeGette

Jerry McNerney

Don Bacon

Rob Bishop

Sanford D. Bishop, Jr.

Veronica Escobar

Jimmy Panetta

Ben McAdams

Eddie Bernice Johnson

David Trone

Dwight Evans

Cindy Axne

Lauren Underwood

Steven M. Palazzo

Vicky Hartzler

Lisa Blunt Rochester

Tom O'Halleran

Joyce Beatty

Ayanna Pressley

James P. McGovern

Mike Simpson

Bonnie Watson Coleman

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<sup>1 1</sup> HRSA, OPA, COVID-19 Resources, <https://www.hrsa.gov/opa/COVID-19-resources>

Bob Gibbs	Jeff Fortenberry	Mike Gallagher
Jamie Raskin	Mary Gay Scanlon	Martha Roby
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Chellie Pingree	Steven Horsford	Mark Takano
Stephen F. Lynch	Danny k Davis	Abigail D. Spanberger
Tony Cárdenas	Hal Rogers	Fred Keller
Al Green	Terri A. Sewell	Bryan Steil
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William R. Timmons, IV

Xochitl Torres Small

Pete Stauber

Russ Fulcher